

REPRESENTATIVE FOR PETITIONER:

Matthew Moore, President, Matthew Frank Moore Foundation

REPRESENTATIVE FOR RESPONDENT:

Frank J. Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Matthew Frank Moore Foundation,)	Petition No.:	71-022-08-2-8-00001
)		
)		
Petitioner,)	Personal property:	27-91332-004
)		
v.)		
)		
St. Joseph County Assessor,)	County:	St. Joseph
)		
Respondent.)	Assessment Year:	2008
)		

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

September 16, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioner's personal property qualified for property tax exemption in 2008 under Indiana Code § 6-1.1-10-16 because the property was predominately used for charitable purposes.

PROCEDURAL HISTORY

2. The Petitioner, Matthew Frank Moore Foundation, filed an exemption application for personal property for 2008.
3. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination denying an exemption for the Petitioner's personal property on November 19, 2008. The Petitioner filed its Petition for Review of Exemption (Form 132) on December 8, 2008.
4. Pursuant to Indiana Code §6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Ellen Yuhan, held a hearing on June 30, 2010, in South Bend, Indiana.
5. The following persons were sworn as witnesses:

For the Petitioner:

Matthew Moore, President, Matthew Frank Moore Foundation,

For the Respondent:

David Wesolowski, St. Joseph County Assessor,
Ross Portolese, PTABOA member.

6. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1 – Articles of Incorporation,
 - Petitioner Exhibit 2 – By-laws,
 - Petitioner Exhibit 3 – Form 990PF.
7. The Respondent did not submit any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 132 Petition with attachments,
 - Board Exhibit B – Notice of Hearing dated May 14, 2010,
 - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
 - Board Exhibit D – Hearing sign-in sheet.
9. The subject property is personal property located at 515 Park Place, Mishawaka, Indiana.
10. For 2008, the St. Joseph County PTABOA determined the Petitioner's personal property was 100% taxable.
11. For 2008, the Petitioner claims its property is 100% exempt.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are

conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

BASIS OF EXEMPTION AND BURDEN

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.

17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

PARTIES' CONTENTIONS

20. The Petitioner contends its personal property is eligible for exemption pursuant to Indiana Code § 6-1.1-10-16 because it is owned, occupied and used for charitable purposes. *Moore argument*. The Petitioner's representative, Mr. Moore, testified that the foundation is a 501(c)(3) organization organized for the purpose of promoting and supporting religious, educational, and charitable purposes. *Moore testimony*. According to Mr. Moore, the foundation donates 5% of its funds to various charitable, religious, and educational organizations each year. *Moore*

testimony. In support of this contention, Mr. Moore presented the Petitioner's Articles of Incorporation and By-laws and its Form 990-PF filing which identified the Petitioner's grants for 2007. *Petitioner Exhibit 1 and 3*.

22. The Respondent's counsel contends the PTABOA denied the exemption because the Petitioner failed to provide sufficient information on its application for exemption. *Agostino argument*. The Respondent agrees that, after review of the Petitioner's evidence, the property qualifies for exemption. *Id*.

SUMMARY OF FINAL DETERMINATION

23. The parties agreed that the predominant use of the property was for an exempt purpose. The Board therefore finds that the Petitioner's personal property is 100% exempt for the March 1, 2008, assessment.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.